

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.
JAN 21 2004 P 3:12

PHILIP L. TROPEANO, PETER TROPEANO,
CAROLYN PATTON,

Plaintiffs

v.

CHARLENE DORMAN, BIANCA DORMAN,
LYDIA DORMAN, TODD DORMAN,
T&N REALTY TRUST AND
CAPTAIN PARKER ARMS PARTNERSHIP,

Defendants

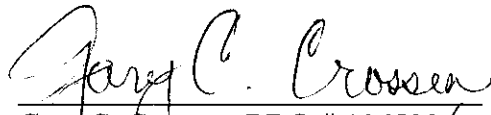
CIVIL ACTION
CASE NO. 03CV12231 (RGS)

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UNDER RULE 12(b)(6)

Pursuant to Fed. R. Civ. P. 12(b)(6), Charlene Dorman, Bianca Dorman, Lydia Dorman, Todd Dorman, T&N Realty Trust and Captain Parker Arms Partnership (collectively "the defendants"), hereby move to dismiss or in the alternative for summary judgment on Counts I and III of the plaintiffs' Complaint. As set forth in more detail in the accompanying Memorandum of Law in Support of Defendants' Motion to Dismiss for Failure to State a Claim under Rule 12(b)(6), the plaintiffs have failed to state a claim upon which relief can be granted as to Counts I and III because plaintiffs and defendants are partners under a partnership agreement which expressly precludes this action.

In addition, the plaintiffs have failed to allege facts sufficient to state a claim for relief as to Count II. Accordingly, the defendants' motion to dismiss or in the alternative for summary judgment should be allowed.

Respectfully submitted,
Charlene Dorman, Bianca Dorman,
Lydia Dorman, Todd Dorman, T&N
Realty Trust and Captain Parker Arms
Partnership
By their Attorneys,

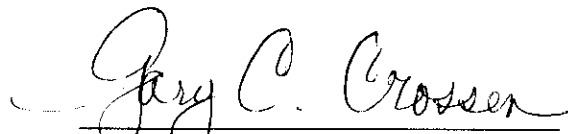


Gary C. Crossen, BBO # 106580 (lne)
Rubin and Rudman LLP
50 Rowes Wharf
Boston, MA 02110
Tel.: (617) 330-7036

Dated: January 21, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January, 2004, I sent a copy of the foregoing by overnight mail to Frederick J. Conroy, Esq., 114 Waltham Street, Lexington, MA 02421 and to Matthew J. Conroy, Esq., Belesi & Donovan, P.C., 1225 Franklin Avenue, Suite 400, Garden City, NY 11530.



Gary C. Crossen (lne)

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January 21, 2004

Via Hand Delivery

Clerk of Court
United States District Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02110

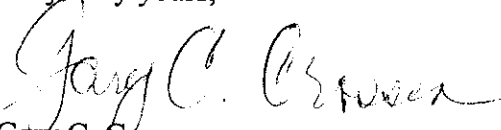
Re: Philip Tropeano, et al. v. Captain Parker Arms Partnership, et al.,
U.S. District Court No. 03-CV-12231-RGS

Dear Sir/Madam:

Enclosed for filing please find Defendants' Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6) and Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6).

Please call with any questions.

Very truly yours,


Gary C. Crossen (enc)

GCC/lac
Enclosures

cc: Frederick J. Conroy, Esq. (via overnight mail)
Matthew J. Conroy, Esq. (via overnight mail)